

PLANNING COMMISSION REPORT



MEETING DATE: September 27, 2006

ITEM NO. _____

GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

Amendment to Penalty Section of the Zoning Ordinance - 11-TA-2006

REQUEST

Request to approve a Text Amendment to the City of Scottsdale Zoning Ordinance (Ordinance 455) to amend Article I. Administration and Procedures, Section 1.1400. Violation and Penalty.; Section 1.1401 Classification of Penalty.; Section 1.1402. Penalties. of the City of Scottsdale Zoning Ordinance #455.

Key Items for Consideration:

- The proposed changes will provide for more appropriate penalties and enforcement of the provisions of the Zoning Ordinance.
- This ordinance amendment supports the ESL text amendment that will restrict grading, clearing or other such activities prior to a site plan being approved by the city.

Related Policies, References:

6-TA-2006

APPLICANT CONTACT

Don Hadder
City of Scottsdale
480-312-2352

LOCATION

City-wide

BACKGROUND

It is important to the community that there is consistency in the application and adherence to the provisions of the Zoning Ordinance. Having a strong enforcement section is a key strategy in meeting this expectation of the community.

There is a need to limit grading and other such disturbance of natural desert areas until such time that there are approved site plans. It has been determined that the enforcement sections of the ordinance could be strengthened and updated so violations could more directly and more clearly be addressed.

The proposed text is in line with applicable State laws and is similar to provision contained in other zoning ordinances across the Phoenix-Scottsdale metropolitan area.

APPLICANT'S PROPOSAL

Goal/Purpose of Request.

The goal is to update the provisions contained within the enforcement provisions of the Zoning Ordinance by: a) clarifying that violation is a Class 1

misdemeanor; b) increasing the potential penalty for violation of a zoning provisions from \$250 to \$2,500; c) allowing a judgment to be a lien against the property if not paid; and d) allowing for penalties to be added to those already in place for violations of the provisions of the ESLO.

IMPACT ANALYSIS**Community Involvement.**

Two Open House meetings were held on August 16, 2006, and September 6, 2006. No known opposition has been voiced. Support has been received from citizens regarding this amendment.

Community Impact.

This text amendment would enhance enforcement of the city's zoning ordinance provisions.

**STAFF
RECOMMENDATION**

Recommended Approach:
Staff recommends approval.

**RESPONSIBLE
DEPT(S)**

Planning and Development Services Department
Current Planning Services

STAFF CONTACT(S)

Don Hadder
Principal Planner
480-312-2352
E-mail: dhadder@ScottsdaleAZ.gov

APPROVED BY


Don Hadder
Report Author


Lusía Galav, AICP
Current Planning Director

ATTACHMENTS

1. Proposed Language
2. Citizen Involvement
3. August 23, 2006 Planning Commission Minutes

CHANGES SHOWN IN BOLD CAPS AND STRIKE-THROUGHS

Sec. 1.1400. VIOLATION AND PENALTY.

Sec. 1.1401. Classification of penalty.

A. Any person, firm, corporation, partnership, or association whether as principal, owner, agent, tenant, or otherwise who violates, disobeys, omits, or refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance is subject to issuance of a civil violation.

B. Notwithstanding subsection A of this section, a second or subsequent violation of any of the provisions of this ordinance within a two-year period shall be deemed a **CLASS 1** misdemeanor.

Sec. 1.1402. Penalties.

A. Upon a finding of a responsible for a civil violation, the court shall impose a civil sanction not to exceed ~~two hundred fifty dollars~~ **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)**.

B. Upon a conviction of a misdemeanor the court may impose a sentence in accordance with section 1-8(a) of the Scottsdale Revise Code and state law for Class 1 misdemeanors. Probation may be imposed in accordance with the provisions of Title 13, Chapter 9, Arizona Revised Statutes.

C. **A JUDGMENT FOR PAYMENT OF A FINE SHALL CONSTITUTE A LIEN IN LIKE MANNER AS A JUDGMENT FOR MONEY RENDERED IN A CIVIL ACTION.**

D. **IN ADDITION TO THE PENALTIES PRESCRIBED IN THIS SECTION, A PERSON OR ENTERPRISE WHO IS FOUND IN VIOLATION OF SECTION 6.1035 SHALL BE SENTENCED PURSUANT TO SECTION 6.1100.C.4.**

11-TA-2006

ATTACHMENT #1



Text Amendment Open House

August 16, 2006

Welcome,

The city of Scottsdale is currently processing several proposed changes to the Zoning Ordinance. The open house tonight is to provide you with information on three of those proposals and to give you a chance to ask questions and provide feedback.

The three proposals covered this evening are:

9-TA-2006 TEMPORARY FENCING

The purpose of this text amendment is to promote and protect the city's aesthetic quality through the use of temporary fencing with screening mechanisms for construction sites, vacant buildings and vacant land.

10-TA-2006 ACCESSORY BUILDINGS AND STRUCTURES

The purpose of this text amendment is to keep accessory buildings within the relative scale of the main buildings and adjacent buildings on single-family lots.

11-TA-2006 RESTORATION OF DAMAGED DESERT AREAS

The purpose of this text amendment is to fully achieve the provisions desired for restoring damaged desert areas in a manner that is consistent with the overall ordinance and its procedures.

The following pages will provide more detailed information on each of these proposals. Please be aware that the proposed text may change between now and adoption based on public comment and direction from elected and appointed officials. For current information, please refer to case fact sheets available online at www.scottsdaleaz.gov/codes/Zoning/update.asp.

These text amendments are tentatively scheduled for Planning Commission hearings this fall. More information will be given and public comment taken at that time. City Council hearing date(s) have not yet been scheduled.

Comment on these proposals, or any other current cases, can be emailed to projectinput@scottsdaleaz.gov. All comments received become a matter of public record and are maintained with the case file.

For more information on these text amendments, please contact Current Planning at 480-312-7000.

Thank you for coming this evening.



FACT SHEET

TEMPORARY FENCING (9-TA-2006)

This request is for a text amendment to the City of Scottsdale Zoning Ordinance (Ordinance No. 455) to amend Article VII, General Provisions.; Section (s) 7.700. Reserved.

The purpose of this text amendment is to promote and protect the city's aesthetic quality through the use of temporary fencing with screening mechanisms for construction sites, vacant buildings and vacant land.

Please Note:
Adoption of this text amendment would create a NEW section in the zoning ordinance.

Section 7.700. RESERVED.* TEMPORARY FENCING.

Section 7.701. Purpose

These regulations are intended to establish procedures and standards that insure and maintain the quality of Scottsdale's physical and aesthetic character of vacant land, undisturbed and/or revegetated land, and land with construction activity.

Section 7.701. Requirements

- A. The erection of temporary fencing shall require a permit issued by the City in accordance with section 7.704.
 1. Temporary fencing shall be permitted in conjunction with a permit for construction activity.
 2. Temporary fencing within the right-of-way or roadway easement shall require a separate encroachment permit.
 3. Construction related activity shall not commence until the temporary fencing is in place and approved by the Building Official or designee.
- B. Any permitted activity associated with exterior building and site improvements, demolition, vacant buildings, clearing, grading, and stockpiling of soil shall require the installation of a temporary fence in accordance with section 7.704 if the improvements and associated construction activities are visible from off site.
 1. Unless otherwise required by the Building Official temporary fencing will not be required when such permitted improvement will be complete in one week from the date of the permit issuance.
 2. Unless otherwise required by the Building Official, temporary fencing will not be required for emergency repairs.
 3. Construction activities that occur within an existing completely enclosed opaque fence or wall that will not be disturbed due to the construction activity shall not be required to provide a temporary fence unless otherwise determined by the Building Official.
- C. Emergency access in the temporary fencing shall be identified in the construction documents prior to the issuance of a building permit. The identification shall be provided in accordance with section 7.704.
- D. Unless permitted under sections 7.701.C, 8.601, and 8.602 signs shall be prohibited on temporary fencing.

Section 7.702 Use Regulations

- A. A temporary fencing permit shall not be issued for more than 90 days, unless the permit for the temporary fence is associated with an active building permit as determined by the Building Official. Once a permit has been issued and expired, a new permit shall not be issued on the same site for the same purposes unless it is associated with a building permit, or is approved by the Building Official.
- B. The Building Official may authorize and/or require an extension of the temporary fencing permit if a permitted construction site is abandoned and is determined detrimental to the health, safety, and welfare of the public, but the temporary fencing permit shall not be extended more than 180 days. Sites that contain temporary fencing shall be restored in compliance with Chapter 18 of the Revised Scottsdale Code prior to the removal of the temporary fencing on or before the date of the permit expiration.
 1. If an abandoned construction site has been determined to be detrimental to the public health, safety, and welfare, the Building

- official may require the temporary fencing to remain in place after 180 days and until the site has been abated accordance with Chapter 18.
2. The owner of the property on which the construction has been abandoned may appeal to the City Council for extension of the temporary fence permit beyond the date determined by the Building Official, or 180 days. An appeal must be filed with the City Clerk 30 days prior to expiration of the temporary fencing permit.
 - a. If an extension has been granted by the City Council, the site that contains temporary fencing shall be restored in compliance with Chapter 18 of the Revised Scottsdale Code prior to the removal of the temporary fencing on or before the date of the permits expiration determined by the City Council.
 - b. If an extension is not granted by the City Council, the site that contains temporary fencing shall be restored in compliance with Chapter 18 of the Revised Scottsdale Code and temporary fencing shall be removed on or before the date previously determined by the Building Official of the permits expiration or 1 week beyond the council action if the action is beyond 180 days.
 - C. Temporary fencing associated with an active building permit may not be removed until approved by the Building Official or Designee. The owner or owner's agent shall immediately remove the temporary fencing upon the completion of the construction activity.
 1. Sites that contain multiple buildings shall maintain the temporary fencing around the portion of the site and buildings under construction as determined by the Building Official or Designee.
 - D. Temporary fencing associated with an exterior demolition permit shall be removed prior to receiving a final inspection approval.
 1. The demolished site must be restored to a condition in accordance with the Chapter 18 of the Scottsdale Revised Code and vehicle access to the site has been secured in accordance with Section 7.704. The owner shall provide documentation of compliance with the Maricopa County Dust Control requirements prior to receiving final inspection approval.

Section 7.703 Prohibited Locations and Enclosures

- A. Temporary fencing around vacant buildings not associated with permitted exterior construction activity is prohibited unless the City's Building Official has deemed the structure uninhabitable or detrimental to the public health, safety, and welfare in accordance with Chapter 18 and/or Chapter 31 of the Revised Scottsdale Code.
- B. The City may remove a vacant building in accordance with Chapter 18 and/or Chapter 31 of the Revised Scottsdale Code at the cost of the owner in accordance with the State of Arizona Revised Statutes.
- C. A Temporary fencing permit shall not be issued to enclosed natural undisturbed and/or revegetated land that is not associated with a building permit for construction of single family residence or a Development Review Board Approval and associated permits.
- D. Temporary fencing shall not be permitted in a Natural Area Open Space (NAOS), Scenic Corridors (SC), Buffered Setback (BS), Desert Scenic Roadways Setback (DSRS), or between a street, and the NAOS, SC, BS, or DSRS as determined by the General Plan, Zoning Ordinance, Development Review Board, or approved plans.
 1. Temporary fencing may be located in the NAOS, SC, BS, DSRS, and/or between a street and the NAOS, SC, BS, DSRS if these are to

be disturbed as part of an active building permit, but the temporary fencing shall not be located in areas that are not to be disturbed.

- E. Occupied buildings not associated with a building permit shall not be enclosed with temporary fencing
 - 1. Temporary fencing associated with a building permit for exterior improvements of an occupied building shall not be installed in a manor that prohibits the safe and continued operation of the building in accordance with the City's adopted Building Code.
 - a. Required exits, existing structural elements, fire protection devices, and sanitary safe guards shall be maintained at all times in accordance with the building code.
- F. Temporary fencing shall not be provided in a watercourse with a flow rate of 50 CFS or greater.
 - 1. Temporary fencing shall not be installed in manor that diverts water on to a separately owned parcel, tract, right-of-way, right-of-way easement, and/or roadway easement.
- G. Existing streets, public transportation stops, fire hydrants, and/or public sidewalks shall not be enclosed by temporary fencing unless the Building Official or designee determines that the facilities are required to be fenced to protect the public health, safety, and welfare.
 - 1. If the Building Official or designee determines that an existing street, public transportation stops, fire hydrants, and/or public sidewalk are to be enclosed with temporary fencing, the temporary fencing and public access shall be provided in accordance with Section 7.704.
- H. Vacant land shall not be fenced with temporary fencing.
 - 1. Vacant land shall be maintained in accordance with Chapter 18 of the Revised Scottsdale Code, and Section 7.704.

Section 7.704. Temporary Fencing Requirements

- A. All temporary fencing shall contain screening and comply fully with the standards approved by the Development Review Board.
- B. The owner of vacant land shall provide deterrents to vehicular access to the land that complies fully with the standards approved by the Development Review Board.
- C. Temporary fencing shall not contain barbed wire, razor wire, razor ribbon, concertina wire, or similar.

Section 7.705 Maintenance Requirement

- A. Temporary fencing shall be substantially built in accordance with the building code.
- B. All temporary fencing shall be maintained in place and kept in a good order for the entire length of the construction activity or until the temporary fencing removed.
- C. Screening attached to temporary fencing shall be maintained in its original condition that complies with the approved standards of the Scottsdale Revised Code and the Development Review Board.
- D. Opening in the temporary fencing shall be protected by doors which shall normally be kept closed.

(This text amendment adds the following definitions.)

ARTICLE III. DEFINITIONS

Sec. 3.100. GENERAL.

Buffered Setback: shall mean a landscape setback adjacent to a roadway designated in the General Plan or in the character area plans that remains in a natural undisturbed condition or is landscaped to create a parkway type of streetscape.

Desert Scenic Roadways Setback shall mean a native vegetation open space intended to preserve views and native vegetation adjacent to roadways that are one mile and half mile roads within the Environmentally Sensitive Lands Ordinance District that are not already established as Scenic Corridors or Buffered Roadways. The width of the open space is determined by the building setback or the Development Review Board.

Revegetated land: shall mean replacement and restoration of land containing scarred or destroyed native vegetation through the introduction of boxed or planted native plant materials and/or comparable seed mix for the purpose of restoring the land to its natural condition, as approved by the City.

Temporary Fencing shall mean a fence that is provided to secure a site during construction activity and will be removed upon completion of the construction activity as determined by the Building Official.

Undisturbed Land shall mean land that has not been developed nor prepared for development, and is in its natural condition.

Vacant Land shall mean land that has been or may have been disturbed through grading, construction activity and/or was previously developed that contains no structures or vertical improvements.



FACT SHEET

ACCESSORY BUILDINGS AND STRUCTURES (10-TA-2006)

This request is for a text amendment to Section(s) 7.200.A. General Provisions/Additional Area Regulations/Accessory Buildings and Section 3.100. Definitions of the City of Scottsdale Zoning Ordinance (455).

The purpose of this text amendment is to keep accessory buildings within the relative scale of the main buildings and adjacent buildings on single-family lots.

Sec. 7.200. ADDITIONAL AREA REGULATIONS.

- A. *Accessory buildings.* This section shall apply only to residential districts.
1. No accessory building shall be constructed upon a lot unless the construction of the main building has been actually commenced.
 2. No accessory building shall be permitted in a required front or side yard.
 3. Accessory buildings may be constructed in a rear yard, but such accessory buildings shall not occupy more than thirty (30) percent of a rear yard, except in R-5 multiple-family residential districts where the lot is used for multiple-family units, accessory buildings may occupy seventy-five (75) percent of the rear yard.
 4. Accessory buildings shall not be constructed closer than two (2) feet to any side or rear lot line, except that accessory buildings within a required side or rear yard which are more than ten (10) feet in height shall be set back an additional one (1) foot for each foot of building height above ten (10) feet.
 5. Accessory buildings used as a garage or carport having access from an alley shall not be located closer than fifteen (15) feet to the centerline of said alley, except that one (1) additional foot of setback shall be provided for each foot of building height above twelve (12) feet.
 6. Accessory buildings used as a garage or carport having direct access from a street shall not be located closer than twenty (20) feet to the back of ultimate improvements, except that one (1) additional foot of setback shall be provided for each foot of building height above twelve (12) feet.
 7. **NO BUILDING ACCESSORY TO A RESIDENTIAL STRUCTURE SHALL BE CONSTRUCTED TO A HEIGHT THAT EXCEEDS THE MAIN BUILDING.**



FACT SHEET

RESTORATION OF DAMAGED DESERT AREAS (11-TA-2006)

This request is for a text amendment to Section(s) 1.400 through Section 1.1412 Violation of Penalty of the City of Scottsdale Zoning Ordinance (455).

The purpose of this text amendment is to fully achieve the provisions desired for restoring damaged desert areas in a manner that is consistent with the overall ordinance and its procedures.

Sec. 1.1400. VIOLATION AND PENALTY.

Sec. 1.1401. Classification of penalty.

- A. Any person, firm, corporation, partnership, or association whether as principal, owner, agent, tenant, or otherwise who violates, disobeys, omits, or refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance is subject to issuance of a civil violation.
- B. Notwithstanding subsection A of this section, a second or subsequent violation of any of the provisions of this ordinance within a two-year period shall be deemed a **CLASS 1** misdemeanor.

Sec. 1.1402. Penalties.

- A. Upon a finding of a responsible for a civil violation, the court shall impose a civil sanction not to exceed **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)**.
- B. Upon a conviction of a misdemeanor the court may impose a sentence in accordance with section 1-8(a) of the Scottsdale Revised Code and state law for Class 1 misdemeanors. Probation may be imposed in accordance with the provisions of Title 13, Chapter 9, Arizona Revised Statutes.
- C. **THE SENTENCE TO PAY A FINE THAT IS IMPOSED ON AN ENTERPRISE FOR A CONVICTION OF A MISDEMEANOR UNDER THIS ORDINANCE SHALL BE A SENTENCE TO PAY AN AMOUNT NOT-TO-EXCEED TWENTY THOUSAND DOLLARS (\$20,000.00).**
- D. **A JUDGMENT THAT AN ENTERPRISE SHALL PAY A FINE SHALL CONSTITUTE A LIEN IN LIKE MANNER AS A JUDGMENT FOR MONEY RENDERED IN A CIVIL ACTION.**
- E. **IN ADDITION TO THE PENALTIES PRESCRIBED IN THIS SECTION, A PERSON OR ENTERPRISE WHO IS FOUND IN VIOLATION OF SECTION 6.1035 SHALL BE SENTENCED PURSUANT TO SECTION 6.1100.C.4.**



DRAFT

**SCOTTSDALE PLANNING COMMISSION
CITY HALL KIVA
3939 NORTH DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA
AUGUST 23, 2006**

REGULAR MEETING MINUTES

PRESENT: Steve Steinberg, Chairman
James Heitel, Vice-Chairman
David Barnett, Commissioner
Steven Steinke, Commissioner
Eric Hess, Commissioner
Kevin O'Neill, Commissioner
Jeffrey Schwartz, Commissioner

STAFF PRESENT: Lusia Galav
Randy Grant
Sherry Scott
Don Hadder
Mac Cummins

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Steinberg at 5:21 p.m.

ROLL CALL

A formal roll call was conducted, confirming members present as stated above.

CONTINUANCE

7. 11-TA-2006 Amendment to Penalty Section to Coordinate with
ESL Amendment

Request by the City of Scottsdale, applicant, for a Text Amendment to the City of Scottsdale Zoning Ordinance (Ordinance 455) to amend Article I. Administration and Procedures Section 1.1400. Violation and Penalty.; Section 1.1401

DRAFT

ATTACHMENT #3

Classification of penalty.; Section 1.1402. Penalties.; Section 1.1403. Commencement of action.; Section 1.1404 Authority to issue civil complaint.; Section 1.1405 Appearance by defendant.; Section 1.1406 Default judgment.; Section 1.1407. Rules of procedure.; Section 1.1408. Collection of civil sanctions.; Section 1.1409. Violations not exclusive.; Section 1.1410. Each day separate violation.; Section 1.1411. Injunction.; Section 1.1412. Reporting of Violations of the City of Scottsdale Zoning Ordinance (455). The purpose of this text amendment is to change and clarify violations and penalty provisions in the Zoning Ordinance.

COMMISSIONER SCHWARTZ MOVED TO CONTINUE CASE 11-TA-2006 TO A DATE TO BE CHOSEN IN THE FUTURE BY STAFF.

Mr. Hadder informed the Commission that the date of September 27, 2006 had been decided upon. He addressed Mr. Schwartz's concerns by confirming that adequate notification and open houses would be conducted fully informing citizens of the changes to be made prior to that date.

VICE-CHAIRMAN HEITEL SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

MINUTES REVIEW AND APPROVAL

1. July 12, 2006 (including Study Session)

VICE-CHAIRMAN HEITEL MOVED TO APPROVE THE STUDY SESSION AND REGULAR MEETING MINUTES OF JULY 12, 2006. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

CONTINUANCES

2. 46-ZN-1990#17 Grayhawk Parcel 2n Rezoning

Request by owner to rezone from Resort/Townhouse Residential District, Planned Community District (R-4R PCD) to Central Business District, Planned Community District (C-2 PCD) with amended development standards and to amend the existing development agreement on 34.9+/- acres located at 8680 E. Thompson Peak Parkway.

3. 25-ZN-2005 Earll Drive Condominiums

Request by owner to rezone from Highway Commercial Downtown Overlay (C-3 DO) to Downtown/Office Residential Type 2 Downtown Overlay (D/OR-2 DO) on a 2.56+/- acre parcel located at 7320 E. Earll Drive.

COMMISSIONER SCHWARTZ MOVED TO CONTINUE CASE 46-ZN-1990#17 TO A DATE TO BE DETERMINED AND CASE 25-ZN-2005 TO SEPTEMBER 27, 2006. SECONDED BY COMMISSIONER STEINKE, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).